NATION
27 April 1985

Welcome Reversal

Last month the American Civil Liberties Union notified its affiliates that it now opposes a 1984 law tightening Central Intelligence Agency secrecy—a law it was instrumental in getting passed. The organization's board reversed its position after the release of C.I.A. letters and memorandums showing that the law could be used to cover up domestic intelligence operations and revealing details of negotiations between A.C.L.U. and C.I.A. attorneys concerning the bill as far back as 1982.

The law exempts the agency's operational files from Freedom of Information Act requests, except in a few cases. Although C.I.A. records that would reveal confidential sources, methods or national security information have always been withheld from F.O.I.A. queries, the agency was required to search and review its operational files in response to each request. According to the C.I.A., the exemption in the law would ease its administrative burden by eliminating those routine searches.

The materials that prompted the civil liberties organization's change of policy were obtained from the C.I.A.'s Legislative Liaison Office as a result of an F.O.I.A. lawsuit filed by Washington attorney James Lesar. They include a 1983 exchange of letters between the agency and the Senate Intelligence Committee. Seeking to ascertain how the law would ease the agency's workload, the committee asked, "If an FOIA request alleges that a CIA intelligence activity be unlawful . . . will all CIA files concerning that activity be subject to search and review?" On July 15, the agency replied that they would not. Under that interpretation of the law, operational files on "internal security" activities, which the 1947 National Security Act expressly forbids, would be exempt. In the same letter, the agency said that "operational activities within the U.S. are an integral part of overseas operations," and that the closing of domestic files to F.O.I.A. requests would have a "substantial" impact on the agency's workload.

In supporting the bill, the A.C.L.U. essentially agreed with the C.I.A.'s contention that other F.O.I.A. requests would be sped up if the agency did not have to review operational files and that because so little information is released from those files anyway, the exemption would not appreciably reduce the flow of information to the public. According to Congressional staff members who worked on the bill, it never would have passed without the A.C.L.U.'s endorsement, so the organization's about-face is significant. The new stance is enunciated in a resolution adopted by the A.C.L.U.'s national board on January 26, after California members who opposed the law circulated the Legislative Liaison Office documents.

Among other things, the documents show that negotiations on the bill began in 1982, a year earlier than previously revealed. One of them describes a meeting on June 28 between Ernest Mayerfeld, then the C.I.A.'s deputy general counsel, and Mark Lynch, an A.C.L.U. attorney,

held in the latter's office. Mayerfeld's summary of the section in the proposed F.O.I.A. lawsuits in prog from operational files. F who was on the House In struck that section from floor, commenting that Cc laws, not "retrospective" ones.

After the A.C.L.U. announced its endorsement of the bill, on May 10 of last year, its California chapters rebelled. On June 6, the executives of A.C.L.U.-Southern California passed a resolution repudiating the bill and asked the national group to reconsider. The resolution adopted by the national board on January 26 puts the civil liberties group on record as opposing the most important sections of the law, including:

§ denial of access to operational files.

§ denial of discovery proceedings in F.O.I.A. lawsuits against the agency.

§ denial of access by plaintiffs to affidavits submitted by C.I.A. attorneys to the judge explaining why requests for files should be denied.

§ use of summary court proceedings instead of adversary hearings, at which both sides present evidence.

A decision by the Supreme Court last week makes the A.C.L.U.'s new stance all the more welcome. In *C.I.A. v. Sims*, the Court upheld the agency's denial of an F.O.I.A. request for the names of researchers on a behavior-control study. The decision gives the C.I.A. sweeping discretion in defining who is an intelligence source.

According to high-level C.I.A. officials, in the five months the law has been in effect it has not eased the agency's workload significantly. The skilled intelligence officers who process F.O.I.A. requests still spend half their time handling queries referred to them by government agencies that find C.I.A.-originated information in their files. Moreover, half of all requests to the C.I.A. are from individuals seeking files on themselves, which are not exempted under the new law. The agency must also deal with demands by researchers that certain documents be declassified. Finally, the law permits the Director of Central Intelligence to exempt specific operational files from search, review and release, but C.I.A. officials say they must still check the files to ascertain if the requested data has been so designated. Once the files are found to be exempt, officials need not review them, but the amount of time saved is small in relation to the agency's F.O.I.A. workload.

It remains to be seen whether the law will reduce the backlog of F.O.I.A. requests as promised. The immediate outlook is not bright. According to the C.I.A.'s information and privacy coordinator, John Wright, as of the beginning of this month the agency had a backlog of 2,600 requests.

ANGUS MACKENZIE

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